

OGC 83-02284

21 March 1983

MEMORANDUM FOR:

[Redacted]

Legislation Division, OGC

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FROM:

[Redacted]

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Assistant General Counsel

SUBJECT:

S. 338 - Competition in Contracting Act of 1983

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[Redacted]

1. In our recent conversation, you advised that the subject bill has been substantially revised and that the current version will be forwarded to us for review. You wished, nevertheless, to receive our comments on the last version.

2. Our position is, to summarize, that which is described in Procurement Note 93, attached, particularly the underlined sections. This would mean that section 313(c) of the bill is too restrictive in its coverage and that section 303(e) is also too restrictive.

3. As examples, the Agency must sometimes restrict competition to a few companies (not just one) for security reasons and we must avoid formal advertised bidding procedures. As you will note, our primary problem is with section 313(c). It is not sufficiently broad.

4. These comments should be helpful in assessing our initial reaction to the new draft of the bill when it arrives in your office.

[Redacted]

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Attachment

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ATTACHMENT

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2 , OCT 1976

OFFICE OF LOGISTICS  
PROCUREMENT NOTE NO. 93

SUMMARY OF AGENCY PROCUREMENT AUTHORITY  
ORGANIZATION AND PROCEDURES

1. This Procurement Note supersedes and cancels Procurement Note No. 54, dated 6 April 1972.
2. Attachment 1 hereto was written to the Office of Federal Procurement Policy in response to a request for comment on draft Office of Procurement Policy Regulation No. 1. It requests a waiver from the Federal Procurement Regulations issued by the General Services Administration and authority to operate the CIA procurement system to the maximum practicable extent in accordance with the Armed Services Procurement Regulations issued by the Department of Defense. Attachment 2 provides the approval by Mr. Witt who is the Administrator for the Office of Federal Procurement Policy.
3. The attachments are considered to present a fairly comprehensive summary of Agency procurement authority and are distributed for your information. We suggest that they be routed to all procurement officers within your span of control.
4. Action has already been initiated with the Office of General Counsel to incorporate the authorities in attachment 1 as well as Executive Order 11905 into the CIA "Guide to Statutes and Law."

*James H. McDonald*  
James H. McDonald  
Director of Logistics

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OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT POLICY

OCT 6 1976

Mr. Michael J. Malanick  
Acting Deputy Director  
for Administration  
Central Intelligence Agency  
Washington, D. C. 20505


Dear Mr. Malanick:

The proposed Office of Federal Procurement Policy (OFPP) Regulation No. 1 establishes a Federal Procurement Regulatory System applicable to the executive agencies. Section 5.a. of the regulation provides that the Armed Services Procurement Regulation (ASPR) shall be applicable to the Department of Defense and to the National Aeronautics and Space Administration (NASA), and that the Federal Procurement Regulations (FPR) shall be applicable, except for NASA, to the civilian executive agencies, and, in certain authorized areas, to all executive agencies.

Your letter of August 12, 1976, sets forth a detailed justification for, and explanation of, your agency's longstanding practice of following the ASPR -- to the maximum extent practicable consistent with your statutory responsibilities and agency programs -- and requests an exemption from the above requirements so as to continue that practice.

Based upon the justification contained in your letter, the Central Intelligence Agency is hereby exempted from the applicability requirements of Section 5.a., of OFPP Regulation No. 1, and may follow the ASPR -- to the maximum practicable extent -- instead of the FPR, except in those areas where the FPR is applicable to all executive agencies.

Sincerely,

  
Hugh E. Witt  
Administrator

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